In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
FREDERICK W. HVOSLEF AND WILLIAM S. Walsh, survivors of William Bennett.
No. 331.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

Supplementing what is said on pages 19 to 21 of the original brief in this case as to the scope and purpose of the act of July 27, 1912, 37 Stat. 240, it is desired to call attention to the legislative history of the act and the debates which attended its passage. This we understand may be done, not for the purpose of holding the court absolutely to the construction put upon the act by those members of Congress who spoke in relation to it, but to disclose the evils at which the act was aimed and the general history of the times in the light of which it is to be interpreted.

Jennison v. *Kirk,* 98 U. S. 453, 459.
Holy Trinity Church, v. *U. S.,* 143 U. S. 457, 465.

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Am. Net etc. Co. v. *Worthington,* 141 U. S. 468, 473.

Binns v. *U. S.,* 194 U. S. 486, 495, 496.

Blake v. *National Bank,* 23 Wall. 307, 319.

Legislative history of the act of July 27, 1912. (H. R. 24699.)

This bill originated in the Committee on Claims of the House. It was referred, upon introduction, to the Committee on the Judiciary, and by that committee reported with amendments on June 6, 1912. (See Appendix of original brief, page 35.)

On June 17, 1912, it was called up from the calendar for unanimous consent. Cong. Rec., vol. 48, p. 8309.

Mr. Ainey, its patron, made the following statement with reference to it:

> Mr. Chairman, I want to make a statement more fully regarding these cases. Under the war revenue act of 1898 there was a provision that inheritances and legacies in excess of $10,000 should be subject to a tax. Through a misinterpretation on the part of the department, individual legacies less than $10,000 were improperly taxed. That is, when the sum total of several individual legacies or inheritances in any estate aggregated more than $10,000 the department held that the estate was subject to the tax. The Supreme Court subsequently, in *Knowlton* v. *Moore* (178 U. S., 41), decided that where there were five legacies, say each less than $5,000, they were not subject to

the tax, even though in the aggregate they amounted to more than $10,000. Prior to this judicial interpretation there had been paid to the Government under this act taxes upon legacies and inheritances amounting to less than $5,000. When the case of *Knowlton* v. *Moore* had become known the statute of limitations had run and claimants had no opportunity to recover, and this bill is to relieve that situation. Not until the decision of the Supreme Court was rendered was there any knowledge on the part of these people who had paid these taxes on legacies of less than $10,000 that there was no liability. There are about 90 claimants and some 15 or 20 bills, largely coming from the Senate, some originating in the House. It was thought best that these be cared for by a general bill removing the statute of limitations.

Mr. BUTLER. Has not the Treasury Department reported favorably upon this measure?

Mr. AINEY. It has, and it has recommended that this bill be passed rather than separate bills as introduced.

Mr. EDWARDS. Mr. Speaker, will the gentleman yield?

Mr. AINEY. Certainly.

Mr. EDWARDS. What is the aggregate amount of these claims?

Mr. AINEY. It is impossible to say accurately, but not to exceed $50,000. There are bills now pending aggregating $28,000.

* * * * *

> Mr. GREEN of Iowa. Mr. Speaker, I hope this bill will pass. It is merely an act of ordinary justice. The Senate has already passed several of the private bills for the refund of these taxes. As stated by the gentleman from Pennsylvania [Mr. AINEY] it was decided by the Supreme Court that the tax had been erroneously collected. A large number of people were unaware of the decision of the Supreme Court and consequently failed to put in their claims within the time prescribed by section 3228 of the Revised Statutes. Others did put in their claims in time, and those have been paid. The greater portion of this tax that was erroneously collected has been refunded, but only those who were unaware of the decision of the Supreme Court in time to make their claim within the provisions of section 3228 of the Revised Statutes, which requires a claim for refund to be made within two years, now ask that the tax be refunded.

* * * * *

The bill was passed without roll call, went to the Senate, and on June 24, 1912, was read twice by its title (Cong. Rec., vol. 48, p. 8482), whereupon Senator Crawford spoke as follows:

> Mr. President, in regard to that bill (H. R. No. 24699), I wish to make a statment.
>
> The Committee on Claims reported favorably some twenty-odd bills relating to claims for the refunding of inheritance taxes which were erroneously collected as shown by the

decision of the Supreme Court of the United States in the Knowlton case. When those bills went to the House, instead of acting on the individual bills the House Committee reported this general provision, so that all cases similarly situated might be acted upon without having so many separate bills.

This is a substitute for all the Senate bills reported favorably by the Senate Committe on Claims and passed by the Senate. On that account I suggest that the bill be referred to the Committee on Claims.

The PRESIDENT pro tempore. The bill will be referred to the Committee on Claims, without objection.

On July 15, 1912, it was reported by Mr. Bryan from the Committee on Claims without amendment. (Cong. Rec., vol. 48, p. 9045.)

On July 24, 1912 (Cong. Rec., vol. 48, p. 9547), it was called up by Mr. Bryan and read and passed without comment or debate.

Nowhere throughout the debates on the bill was it for a moment suggested that it had any purpose other than to meet the situation created by the *Knowlton case,* covering claims estimated in number at 90, in amount not to exceed $50,000, and as to which there were then pending some 15 or 20 bills aggregating $28,000.

JOHN W. DAVIS,
Solicitor General.

JANUARY, 1915.

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No. 331

Supreme Court of the United States,

OCTOBER TERM, 1914.

THE UNITED STATES,
Plaintiff in-Error,

v.

FREDERICK W. HVOSLEF and WILLIAM S. WALSH,
Survivors, &c.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR DEFENDANTS IN ERROR.

EVERETT P. WHEELER,
Of Counsel.

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Supreme Court of the United States,

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THE UNITED STATES,
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FREDERICK W. HVOSLEF and
WILLIAM S. WALSH,
Survivors &c.

Brief for Defendants in Error.

Statement.

The defendants in error, between July 1, 1898, and September 19, 1900, were assessed an Internal Revenue tax, under the War Revenue Act of June 13, 1898, amounting to $353 (R. 11). This tax was paid by the purchase of stamps and was collected by the Commissioner of Internal Revenue. The stamps which they were required to affix were upon charter-parties for vessels carrying "export cargoes from ports in the States of the United States to foreign ports" (R. 11). This tax was paid without protest and the claim for its refunding was not presented until November, 1912 (R. 11, 12).

On July 27, 1912, an Act was passed, which is pleaded in the petition (R. 2), and found by the

Court (R. 12). The petition for the refunding of the tax thus paid, alleges that the tax upon charter-parties for the transportation of export cargoes from the United States to foreign countries was in violation of the 9th Section of the First Article of the United States Constitution, which provides: "No tax or duty shall be laid on articles exported from any state" (R. 2). The War Revenue Act declared that charter-parties, to which no stamps were affixed, were invalid and the parties thereto were liable to punishment, by fine or imprisonment, for failure to affix such stamps.

Section 13, 30 Stat. at Large, 454.

The petitioners presented their claim to the Commissioner of Internal Revenue, the amount was examined by the collector and found to be correct (R. 12), but the Commissioner rejected the claim "on the ground that the said Act (of July 27, 1912) did not apply to said claim" (R. 13). They then filed their petition in the District Court of the United States for the Southern District of New York. To this plaintiff in error demurred. The demurrer was overruled by Circuit Judge Noyes, who held that the clause of the War Revenue Act requiring stamps to be affixed to charter-parties for the transportation of exports from the United States to foreign countries was unconstitutional and that relief was given by the Act of July 27, 1912 (R. 6-8). The plaintiff in error then answered and pleaded a general denial, and that the Court had no jurisdiction over the defendant or the subject matter of the petition (R. 9). The case was tried on these issues before District Judge Holt, whose findings are at pages 10 to 13 of the Record. He found all the facts alleged in

the petition and held as a matter of law, that the Court had jurisdiction over the parties and of the subject matter of the action; that the portion of the War Revenue Act complained of was unconstitutional and that the petitioners were entitled to judgment against the United States for $353 (R. 13).

POINTS.

FIRST.

Jurisdiction.

Jurisdiction of this cause was conferred upon the District Court of the United States by the Judicial Code of March 3, 1911, Section 24, subd. 20. This provides:

"SEC. 24. The district courts shall have jurisdiction as follows: * * *

Twentieth.—Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress * * * or upon any contract, express or implied, with the Government of the United States," &c. Certain provisions follow which do not affect this case.

By this Act the United States submitted itself to the jurisdiction of the District Court.

The twentieth clause was a re-enactment with some extension as to amount of the Act of March 3, 1887.

24 Stat. 505.

This jurisdiction is similar to that conferred upon the Court of Claims by Sec. 145 of the Judicial Code.

SECOND.

The Act of July 27, 1912, pleaded in Petition (p. 2).

This Act is the foundation of plaintiff's right of action. As pleaded in the petition (R., pp. 1-3) and found by the Court (R. 12) this comes in all respects within the provisions of that Act.

1. The claim is for the refunding of sums alleged to have been wrongfully collected under the provisions of Section 27 of the Act of Congress approved June 13th, 1898, known as the War Revenue Tax Law.

2. The claim was presented to the Commissioner of Internal Revenue October 26th, 1912, fourteen months before the expiration of the extended time given by the Act of July 27, 1912.

3. The Commissioner has rejected the claim and it now becomes necessary under Section 2 of said Act for the claimants to establish it, which they are doing in this suit.

> Campbell *v.* United States, 107 U. S. 407.
> Thacher *v.* same, 149 Fed. 902.

In the Campbell case this Court said (p. 412):

"It is an error to suppose that the officers of customs, including the secretary, are, in regard to

this law, created a special tribunal to ascertain and decide conclusively upon the right to drawback. Their function is entirely ministerial."

S. P. U. S. *v.* Am. Tobacco Co., 166 U. S. 468.

U. S. *v.* Shipley, 197 Fed. 265, (C. C. A. Third Circuit).

THIRD.

The Act Comprehensive.

The argument most pressed for the Government is that the act pleaded in petition was intended to apply only to claims for refund of taxes on legacies unlawfully collected. To this we reply:

1. The language of the Act is broad. It says (R. p. 2):

"All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected under the provisions of Section 29 of the Act of Congress approved June 13, 1898, known as the war revenue tax, or of any sums alleged to have been excessive or in any manner wrongfully collected under the provisions of said act, may be presented to the commissioner of Internal Revenue," &c.

Section 2 (p. 2): "The Secretary of the Treasury is hereby authorized *and directed* to pay * to such claimants as have presented or shall hereafter so present their claims and shall establish such erroneous or illegal assessment or collection, any sums paid by them," &c.

It is found (R. pp. 12, 13):

"*Sixth.*—In accordance with the provisions of the said last-mentioned act and pursuant to the letter of the Commissioner of Internal Revenue, which has been marked 'Exhibit 2,' the petitioners presented and filed their claim for the refunding of the taxes paid as aforesaid with the collector of internal revenue for the second district of New York in the month of November, 1912. Said claim was filed in writing and was sworn to in accordance with the regulations of the Commissioner of Internal Revenue.

Seventh.—The said collector thereupon entered the said claim on his record and caused an examination of said claim and of the original charter parties and of the stamps thereon to be made, and certified in due form that the schedule attached to said claim (a copy whereof is attached to the petition herein) contained correct statements and accurately specified the value of the cancelled stamps, and accordingly he forwarded the claim so certified to the office of the Commissioner of Internal Revenue and the claim was thereby presented to the said commissioner.

Eighth.—On or about the 22nd day of January, 1913, the said Commissioner of Internal Revenue rejected the said claim and declined to allow or approve the same, or to transmit the same for payment to the Secretary of the Treasury, pursuant to the provisions of the act of July 27th, 1912, on the ground that the said act did not apply to said claim, and the defendant, the United States of America, refused to pay the same."

2. The history of the legislation on this subject shows plainly that the Act in question is not to be limited by construction but should be construed according to its plain terms.

Under the Act of May 12, 1900, (31 Stat. 177) the Commissioner of Internal Revenue may "upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps issued under authority of law to denote the payment of any Internal Revenue Tax * * * where the rates or duties representel thereby have been excessive in amount, paid in error, or in any manner wrongfully collected." This gave the Commissioner full authority to redeem the stamps in question, had the claim been presented within the time fixed by law, which in the case of documentary stamps issued under the War Revenue Act expired July 1st, 1904. But he declined to exercise this authority until a decision of the Supreme Court should be had that the stamp section in the War Revenue Act was unconstitutional in its application to specific documents. Accordingly, the Fairbank case was brought to test the validity of the Act so far as it applied to export bills of lading. When this decision was made in 1901 (181 U. S. 283), it was supposed that the Commissioner of Internal Revenue would submit to the authority of the rule stated by the Court. He however, refused to submit to this authority, because that case involved only bills of lading. Thereupon, the New York & Cuba Mail Steamship Company suit was brought (125 Fed. 320). In that case this Court held in 1908 (200 U. S. 488), that in order to support an action to compel the United States to refund, it was necessary that a protest should have been made at the time the stamps were bought. The litigation thus continued and the refusal of the Commissioner to entertain claims that had not been directly passed upon by the Court,

delayed the presentation of other claims until after the time fixed by law. Thereupon, Congress passed the remedial Act of July 27, 1912, which enables claimants to recover against the United States, notwithstanding that claims were not presented before the first day of July, 1904, and notwithstanding that no protest was made at the time the stamp was bought. These were the two defects in the existing law, which the Act was designed to remedy.

The statute being "remedial in its character and relating to the law of procedure is to be liberally construed with reference to the purpose of its enactment."

> Bechtel *v.* United States, 101 U. S. 597, 599.
> U. S. *v.* Musgrave, 160 Fed. 700.

In such construction we should consider the occasion and necessity of its enactment, the defects and evils of the former law, and the remedy provided by the new one.

> U. S. *v.* Ninety-nine Diamonds, 139 Fed. 961, 965.

Remedial statutes should be construed liberally.

> Silver *v.* Ladd, 7 Wallace, 219.
> Merchants National Bank of Baltimore *v.* United States, 42 Ct. of Claims, 6.
> 1 Kent Comm. 465.

Thus construed, it is obvious that the Act of July 27th, 1912, applied to the claims in question. The sums for which recovery is sought were "wrongfully collected," as will be shown un-

der Points Eighth to Tenth. This statute extends the time for the presentation of the claims to the first day of January, 1914, and it directs the Secretary of the Treasury to pay to such claimants "as shall hereafter so present their claims and shall establish such erroneous or illegal assessment and collection, any sums paid by them or on their account or in their interest to the United States under the provisions of the Act aforesaid." This mandatory character of the Act was intended to and does remove the objection that no protest was made, raised by the Government in the Chesebrough case (192 U. S. 253) and in the New York & Cuba Steamship case. The objection sustained by this Court in those cases was certainly of a technical character. It was a just act to relieve the petitioners, and those in like case with them from such a bar.

Thacher *v.* United States, 149 Fed. 902.

In ordinary parlance, "the exporters were compelled to affix the stamps in question. The Act punished them by fine and imprisonment for failure so to do, and declared the charter parties invalid and of no effect. How could they file a protest? Revenue stamps are dealt with in open market. An exporter sends out to buy them from the dealer. He cannot file a protest with him. To require one to be filed with the Treasury Department is to impose an unreasonable burden. A great government like this ought not to seek shelter under such a requirement. It has had the exporters' money. The Supreme Court holds this was unlawfully taken. The just thing is to restore it."

This last paragraph is a quotation from the brief which was presented to the Judiciary Committee of the United States Senate in support of an Act removing existing obstacles to the relief now sought for. This is in accord with the policy stated by the Court of Claims in Kaufman's case, 11 Ct. of Claims, Rep. 668, 669,

"It has ever been the general and liberal policy of the Government, under such regulations as Congress has either itself seen fit to make, or has required its officers to prescribe, to remit and refund taxes and duties erroneously assessed or paid in excess of legal obligations in order that the burdens of taxation may not fall unjustly upon any of its citizens."

3. In the Court below the plaintiff in error relied especially upon Nichols *v.* United States, 7 Wall. 122 (1868) to support the proposition that the suit should have been brought against the collector.

In addition to the arguments on this subject submitted in No. 117, United States *v.* Emery, Bird, Thayer Realty Co., attention is called to the fact that the action in the Nichols case was brought to recover duties illegally imposed on imported goods. The right of action in such case against the collector given by Section 3011 of the Revised Statutes applies only to the collection of duties on imports.

Arnson *v.* Murphy, 109 U. S. 238.

No such statutory right of action is given in Title 35 of Revised Statutes, relating to Internal Revenue. Sections 3226 to 3228 are limitations upon any suit "in any Court for the recovery of

any internal tax alleged to have been erroneously or illegally assessed".

It was the bar created by these sections that is removed by the Act under consideration. The Nichols decision has no application.

U. S. *v.* Finch, 201 Fed. 95, (C. C. A. Seventh Circuit).

Dooley *v.* United States, 182 U. S. Rep. pp. 222, 228.

Christie Street Com. Co. *v.* United States, 136 Fed. Rep. pp. 326, 331 (C. C. A. 8th Circ.).

Medbury *v.* United States, 173 U. S. p. 492.

Foster *v.* United States, 32 C. C. 170.

The Daly case, 26 Op. Atty. Genl. 194.

FOURTH.

Foundation of jurisdiction to declare statute unconstitutional.

The Court is called upon to exercise its highest function, that of deciding whether an Act of Congress is in violation of the Constitution of the United States.

In view of the criticisms upon this jurisdiction, it is well to recall that the people of the United States made the government, and determined that it should be a free government, that the powers of their delegated agents, whether Executive or Legislative should not be unlimited and that individual rights should be secure from invasion. To this end they established this Court, as a co-

ordinate branch of the United States Government and provided (Article III, Section 2):

"THE JUDICIAL POWER SHALL EXTEND TO ALL CASES IN LAW AND EQUITY ARISING UNDER THIS CONSTITUTION, THE LAWS OF THE UNITED STATES," &c.

This judicial power is a real, substantial, effective jurisdiction, to hear and to decide.

When it is exercised in constitutional cases, this Court, appointed and acting by virtue of the authority conferred by the People, determines whether or not their representatives in the Congress have exceeded their powers.

Fairbank *v.* United States, 181 U. S. 283, 285.

FIFTH.

Limitation upon taxing power of Congress.

The question then is simply this:

Did the Congress in imposing as it did in 1898, a stamp tax upon charter-parties, in so far as they provide for the transportation of articles exported from any State to foreign countries, violate the prohibition of the First Article of the Constitution which defines the powers of the Congress. That Article is the charter of the legislative branch of the government. Section 9, subdivision 5, declares the following limitation upon its power:

5. NO TAX OR DUTY SHALL BE LAID ON ANY ARTICLES EXPORTED FROM ANY STATE.

SIXTH.

Rules of constitutional construction.

Three cardinal rules for guiding the action of this Court in constitutional cases have been established:

1. The presumption is in favor of the constitutionality of a statute.

2. The Legislature cannot do indirectly what it is prohibited from doing directly.

3. "The power to tax involves the power to destroy."

SEVENTH.

Presumption constitutionality in this case minimized.

We concede that the presumption is in favor of the validity of the statute. But we maintain that this presumption is less strong, in favor of a statute, imposing taxes in a multitude of ways, and upon a multitude of objects. The attention of Congress, in such cases is directed to the main purpose of revenue, and particular prohibitions may easily be overlooked. The President cannot veto a particular clause. He must sign the bill or reject it as a whole. His signature therefore, is no evidence of his approval of every clause.

EIGHTH.

A Legislature cannot do indirectly what the Constitution forbids it to do directly.

The second principle of construction which has been stated was formulated by this Court in the eighth conclusion stated by Mr. Justice Wayne delivering the opinion of the Court in the Passenger Tax cases, 7 Howard 283, 414:

"8. That the power in congress to regulate commerce with foreign nations and among the several States, includes navigation upon the high seas, and in the bays, harbors, lakes, and navigable waters within the United States, and that any tax by a State in any way affecting the right of navigation, or subjecting the exercise of the right to a condition is contrary to the aforesaid grant."

An attempt to evade this decision was made by the State of New York. An act was passed, requiring every captain to report to the mayor the name, last residence and occupation of every alien passenger. It directed the mayor to require the owner or consignee of the ship to give a bond with sureties in a penalty of $300—to indemnify the State against any such person becoming a public charge. From this onerous requirement the owner could be relieved by paying a dollar and a half for each passenger, within twenty-four hours after he landed.

The shipowners submitted to this system for twenty years. They then decided to contest it. In 1875, in the case of Henderson against the Mayor of New York (92 U. S. Rep., 259) it was unanimously held that the transportation of pas-

sengers was as much a part of commerce as that of goods; that a tax upon passengers was a tax on commerce, and that the Court would look through the device by which the city apparently only required a report and security against pauperism. "In whatever language," said Mr. Justice Miller, "a statute may be framed, its purport must be determined by its natural and reasonable effect" (p. 268).

Shortly after this Court held another attempt of the State of New York to levy a tax on commerce in the guise of a harbor regulation, to be in violation of the Constitution.

> Inman Steamship Co. *v.* Tinker, 94 U. S. 238.

The same rule of construction was applied by this Court to the interpretation of the clause of the Constitution now under consideration.

> Fairbank *v.* United States, 181 U. S. 283.
> United States *v.* New York & Cuba Mail Steamship Company, 200 U. S. 488.

The Fairbank case is fully considered in the brief in Thames & Mersey Co. *v.* United States (No. 616) argued in connection with this case (Brief, pp. 7-9). It was referred to by this Court in the N. Y. & Cuba Mail S. S. Co. in the following terms (p. 490):

"In the Fairbank case it was held that a stamp tax on bills of lading imposed by the Act of June 13 was a tax on exports, and therefore void. In the case at bar the district court observed 'that the essential character of the stamp tax on manifests was that of a tax on exports, in the same

sense in which a stamp tax on a bill of lading was a tax on exports. The United States now concedes the correctness of this ruling, but urges, nevertheless, that the judgment for defendant in error was erroneous because, as is contended, the stamps were purchased and affixed voluntarily and without protest."

To use the language of Mr. Justice Woodworth in

> Steamboat Co. *v.* Livingston, 3 Cowen, 713, 733,

"No principle is better settled than this: what cannot lawfully be done directly cannot be done indirectly."

> S. P. Brown *v.* Maryland, 12 Wheat. 419.

A Maryland statute required importers of certain articles to take out a license (fee $50) and were subject to fine in case of neglect or refusal to take out the license. It was argued that this was a tax on property or at most on the business of the importer. But this Court held that in effect, though not in form, it was "an impost or duty on imports" and therefore repugnant to the clause of the Constitution (Art. I, Section 10, par. 2) which prohibits a state from laying any duty on imports or exports. At p. 439 Chief Justice Marshall says:

"It is obvious that the same power which imposes a light duty, can impose a very heavy one, one which amounts to a prohibition. Questions of power do not depend on the degree to which it may be exercised."

> S. P. Norfolk and West. Ry. Co. *v.* Sims, 191 U. S. 441 (1903).

At p. 449 the Court said (referring to Brown *v.* Maryland):

"The case is one of the most important ever decided by this Court and has been adhered to by a uniform series of decisions since that time."

The same principle has been applied by this Court in a great variety of cases.

Contract labor laws:

Bailey *v.* Alabama, 219 U. S. 219, 244.

Taxation on Commerce:

Western Union Tel. Co. *v.* Kansas, 216 U. S. 1, 27, and cases cited.
Ludwig *v.* Western Union Tel. Co., 216 U. S. 146, 162.

In the dissenting opinion in the Kansas case, Mr. Justice Holmes concedes the soundness of the principle here contended for. At p. 53, he says:

"I quite agree that we must look through form to substance."

This principle is as old as the Roman law.
Digest Liber I, tit. 3, De legibus, &c. Section 29:

"Contra legem, qui id facit quod lex prohibet: in fraudem vero, qui salvis verbis legis sententiam ejus circumvenit."

Which is well translated in the French edition of Hulot & Berthier (1805), p. 60:

*"C est agir contre la loi que de faire ce qu'elle defend; c 'est agir en fraude de la loi, quand on attaque son esprit en conservant ses termes."**

NINTH.

"The power to tax involves the power to destroy."

This language is quoted from the opinion of this court delivered by Chief Justice Marshall in McCulloch *v.* Maryland, 4 Wheaton 316, 431. This famous phrase which had first been used by Daniel Webster in his argument in the case was repeated by him in his speech in the Senate on an amendment to the Bill for renewing the charter of the Bank of the United States. (Webster's Works, Vol. III, p. 408):

"A power of taxation without fixed limits and without guards, is a power to embarrass, a power to oppress, a power to expel, a power to destroy."

The same language was repeated by Mr. Justice Brewer delivering the opinion of this court in Fairbank *v.* United States, 181 U. S. 283, 290.

"If, for instance, Congress may place a stamp duty of ten cents on bills of lading on goods to be exported, it is because it has power to do so; and

*It would be unnecessary to translate were this not required by the rule:

He acts against the law, who does what it forbids. He acts in fraud of the law, who without transgressing the letter, circumvents its spirit and intent.

if it has power to impose this amount of stamp duty it has like power to impose any sum in the way of stamp duty which it sees fit. And it needs but a moment's reflection to show that thereby it can as effectually place a burden upon exports as though it placed a tax directly upon the articles exported. It can, for the purpose of revenue, receive just as much as though it placed a duty directly upon the articles, and it can just as fully restrict the free exportation which was one of the purposes of the Constitution. The power to tax is the power to destroy. And that power can be exercised, not only by a tax directly on articles exported, but also and equally by a stamp duty on bills of lading evidencing the export."

The Court is referred to the brief in Thames and Mersey Marine Ins. Co. *v.* United States (No. 616) which case is argued herewith, for a further discussion of this subject.

A notable instance, in which the power to tax was avowedly exercised to destroy and did destroy, is the tax of ten per centum, levied upon the circulating notes of State Banks. This Act was held constitutional in

Veazie Bank *v.* Fenno, 8 Wallace, 533.

This Court held that where the legislative power to tax existed, the Court could not limit its exercise, even though this would destroy the subject of taxation.

TENTH.

Tax on charter party unconstitutional.

The tax which is now complained of, and the refund of which was granted by the judgment of the Court below, differs in no respect on principle from the stamp tax on export bills of lading or on manifests, both of which have been held unconstitutional. The charter party is the document by which the cargo space of a ship is leased. This enables the articles exported to be transported to a foreign country. A tax upon it is as clearly a tax upon exports as was the tax in the other cases referred to. Goods can only be transported from the United States to most foreign countries in a ship. The bill of lading is an agreement by which part of the cargo space is hired for the transportation of a particular lot of merchandise. The charter party is an agreement for the whole cargo space. There can be no distinction on principle between them, so far as the taxing power is concerned. To tax either is clearly to tax the goods which they enable to be exported. In the Fairbank case Mr. Justice Brewer said (p. 293):

"If all exports must be free from national tax or duty, such freedom requires, not simply an omission of a tax upon the articles exported, but also a freedom from any tax which directly burdens the exportation; and, as we have shown, a stamp tax on a bill of lading, which evidences the export, is just as clearly a burden on the exportation as a direct tax on the article mentioned in the bill of lading as the subject of the export."

Surely a tax upon the charter party which enables the exporter to ship the domestic goods to foreign ports is a burden upon the exportation, and the burden is even more direct than the tax upon the bill of lading or the export manifest.

There is no distinction in principle between a contract for the carriage of a small lot of exported goods and one for the carriage of a large lot. A common carrier operating ships on a regular line makes a separate contract,—that is, issues a separate bill of lading,—for each lot of goods which he agrees to transport. He is carrying for a large number of different shippers. The War Revenue Act of 1898 taxed each of these bills of lading, and in that way taxed the whole cargo. The total of all the combined bills of lading issued on such a general ship is equivalent to a contract to carry the entire cargo. Where a merchant has a full cargo lot and contracts with a steamship for the carriage of the whole lot, the rate charter party—the name given to that contract—is the equivalent of the total of the bills of lading issued on a general ship. It is simply a contract to transport cargo from the United States to a foreign port, and is indeed more obviously an export contract than is an export bill of lading, because the latter combines with the contract to carry, a receipt for the goods. The decision in the Fairbank case shows that a contract to export goods cannot be taxed, and that the documents customarily used in exporting cannot be taxed. An export rate charter party is such a contract and such a document.

That it is essential to the export business is shown, not merely by the fact that it is universally used in cases of full cargo lots, but also by the

fact that the Courts treat it as one of the documents essential to such transactions. In the case of *Ireland* v. *Livingston*, L. R. 5 H. L. 395, 406, the Court speaks of "the charter party, bill of lading and policy of insurance" as the regular documents in use. The Court in *Tamvaco* v. *Lucas*, 1 Best & Smith, 185, 197, enumerates the same papers as the "shipping documents." Under the Fairbank case it is plain that an export document, to be protected against taxation, need not be a document absolutely necessary to the carrying on of the business. Possibly some method *could* be devised by which bills of lading, charter parties, manifests and drafts could all be dispensed with. It is, however, beyond any question that the charter party is a commercially necessary document, in view of the way in which business is actually done, and that being so, it is directly covered by the decision in the Fairbank case.

ELEVENTH.

The judgment of the District Court should be affirmed with costs.

EVERETT P. WHEELER,
Of Counsel for
Defendant in Error.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 331.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

FREDERICK W. HVOSLEF AND ANOTHER.

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR.

EVERETT P. WHEELER,
Of Counsel for Defendants in Error.

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Defendants in error file this supplemental brief in reply to points now first made by plaintiff in error in brief just filed.

First.

RESIDENCE OF PETITIONERS.

1. The objection that the residence of petitioners is not sufficiently alleged in the petition was not taken in the court below, and is not specified in the assignment of errors (R., 15). The equity of Rule 21, subd. 4, applies: "Errors not specified according to this rule shall be disregarded."

2. This case affords occasion for applying to practice in this court the rule established recently for equity practice.

Equity Rule 19:

> "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

In the case at bar there was no *"substantial right"* of the Government to have the suit tried in any particular district or in the Court of Claims. The latter court has jurisdiction irrespective of residence.

Judicial Code, § 145.

Indeed, it was obviously more convenient for the Government to have the case tried in the Southern District of New York. The transactions involved in it took place there (R., 11). The witnesses are there. Even assuming, which does not appear, that the legal domicil of petitioners was in another district, and the suit had been brought there, the court, if it had power, would have changed the venue to the Southern District for the convenience of witnesses. The district courts have not been granted that power. But the whole tendency of legislation is to treat them as parts of one judicial system. The judge of one district may be assigned to duty in another. In the spirit of this legislation this court should now hold that the objection that a suit is not brought in the proper district must be taken specially at the outset or it is waived.

Western Loan Co. *vs.* Butte & Boston Co., 210 U. S., 368.

Matter Moore, 209 U. S., 490.

St. Louis Railway *vs.* McBride, 141 U. S., 127.

N. Y. & O. S. S. Co. *vs.* United States, 202 Fed., 311; Coxe, C. J.

In the case cited for plaintiff in error, Reid W. Co. *vs.* U. S., the objection was taken by motion to quash. Had this

course been pursued in the court below petitioners could have amended or sued in another district. The district courts have jurisdiction of the subject-matter. In such case the requirement as to the district in which suit may be brought is purely personal and may be waived, as held in cases cited above.

The decision just handed down (January 11, 1915) in Arizona & New Mexico Ry. Co. *vs.* Clark, involves the same principle. The citizenship cases have no application. They were decided upon the language of the Constitution, defining jurisdiction.

3. But this is to assume that the suit was brought in the district where petitioners did not reside. That nowhere appears. If there is any defect in the language of the petition it was amendable. The New York Code of Civil Procedure provides as follows (section 721):

> "In a court of record where a verdict, report, or decision has been rendered, the judgment shall not be stayed, nor shall any judgment of a court of record be impaired or affected by reason of the following imperfections, omissions, defects, matters, or things in the process, pleadings, or other proceedings:
>
> * * * * * * *
>
> "8. For omitting to allege any matter without proof of which the verdict, report, or decision, ought not to have been rendered."

Again, in section 723:

> "* * * And in every stage of the action the court must disregard an error or defect in the pleadings or other proceedings, which does not affect the substantial rights of the adverse party."

Again, at the end of section 1317 (amendment of 1912):

> "After hearing the appeal the court must give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties."

Section 914, U. S. Rev. Stat., provides that, "The practice, pleadings, and forms of proceeding in civil causes (other than equity and admiralty causes) in the district courts, shall conform as near as may be" to the practice, etc., in the courts of record of the State within which such district courts are held.

These statutes of New York are therefore applicable.

4. The allegation of the petition is sufficient. Residence is a word of various significance, and should be construed in a statute according to the subject-matter. In the case of a firm its residence is its place of business. This is alleged to have been in the Southern District (R., 1). It is so found (R., 10, First Finding). It is there and not in the district where the partner's family lives, that the suit should be brought. One is his home, the other his partnership, or business residence. This is analogous to the rule in corporation cases.

In re Hohorst, 150 U. S., 653.

Second.

TONNAGE TAXES.

Tonnage taxes have been imposed by the United States since September 1, 1790. By the act of July 20, 1790 (1 Stat. at Large, 135), it is provided,

> "That, upon all ships or vessels which, after the first day of September next, shall be entered in the United States *from any foreign port or place*, there shall be paid the several and respective duties following:
>
> "On American vessels, six cents per ton.
>
> "On foreign vessels, built within the United States, thirty cents per ton.
>
> "Other foreign vessels, fifty cents per ton."

This statute has been often amended. But the provision that the tax is payable only upon vessels "entered at any custom-house *from any foreign port or place,*" has never been changed.

U. S. Rev. Stat., § 4219.
7 Fed. Stat., annotated, 318-320.

In Aquirre *vs.* Maxwell, 3 Blatchf., 140, cited by plaintiff in error, the tax was imposed when vessel entered port. It was solely on Spanish vessels, was retaliatory, and was upheld like the embargo, as a regulation of commerce.

The power to regulate is one thing. The power to tax is another.

Tonnage taxes as levied by the United States are therefore obviously a regulation of commerce, and the argument from their imposition fails.

The power to impose them is prohibited to the States.
State Tonnage Tax cases, 12 Wall., 204, 215 (1870).

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 331.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

FREDERICK W. HVOSLEF AND WILLIAM S. WALSH,
SURVIVORS OF WILLIAM BENNETT.

BRIEF FOR DEFENDANTS IN ERROR.

Statement.

The District Court of the United States for the Southern District of New York decided that this action was properly brought under the refunding act of July 27, 1912 (37 Stat., 240), as such act was general legislation directing the refund of internal-revenue taxes which had been erroneously and wrongfully assessed and illegally collected under the provisions of section 25 of the war-revenue act of June 13, 1898 (30 Stat. L., 448), which taxes sought to be refunded had been assessed and collected on charter parties of vessels used for the export of goods from the United States to for-

eign countries, and such taxes were held to be unconstitutional, and judgment accordingly rendered in favor of the claimant under the Judicial Code of March 3, 1911, section 24, subdivision 20.

Points.

1st. Question of jurisdiction.
(Assignment of error No. 1.)

2d. Question of protest.
(Assignment of error No. 4.)

3d. Question of the construction of the refunding act of July 27, 1912 (37 Stat., 240).
(Assignment of error No. 6.)

1st. Jurisdiction.

This case differs somewhat from that of the United States *vs.* Emery, Bird, Thayer Realty Company, Calendar No. 117, October term, 1914, in that the District Court in the case at bar assumed jurisdiction by reason of the action being brought under the refunding act of Congress approved July 27, 1912, *supra,* which refunding act is no part of the general system of internal-revenue laws relating to the recovery of taxes (sections 3220, 3226, and 3228, R. S.), but is simply a new act giving claimants a right to maintain a claim for the recovery of internal-revenue taxes which were erroneously and wrongfully assessed and illegally collected, and which were previously barred under the aforesaid sections 3220, 3226, and 3228, R. S., said refunding act creating new rights.

In the Emery, Bird, Thayer Realty Company case the action was brought within the time prescribed by sections 3220 and 3228, R. S., the taxes having been paid under protest, and the court assumed jurisdiction under the act of March 3, 1887, otherwise known as the Tucker act, now a part of the Judicial Code, the court holding that the taxes

so collected were illegally collected under the Excise Corporation Tax act of August 5, 1909, and properly so.

The question of jurisdiction in the case at bar is identical with that raised by the United States in the case of the Fidelity Trust Co. *vs.* The United States (45 C. C., 362; affirmed 220 U. S., 158). In the Fidelity case the claim for the recovery of legacy taxes was based entirely upon the refunding act of Congress, approved June 27, 1902 (32 Stat., 406). The Court of Claims dismissed the contention of the United States on this point, and its decision on this question was affirmed by this court.

Counsel for the United States conceded jurisdiction in a very late case similar to the Fidelity Trust Company case, the case in question being that of Benjamin F. Jones, Jr., sole administrator of the estate of Adelaide P. Dalzell, Calendar No. 450, October term, 1914, of this court.

The provisions of the refunding act of July 27, 1912, are special, and apply to a particular class of obligations against the Government. Being special, these claims are not governed by the provisions of the prior general statutes (sections 3220, 3226, and 3228, R. S.).

Suits brought to recover money due under this act are not actions for the recovery of taxes, but for money held by the Government in trust for the benefit of parties to whom it rightfully belongs. The act by its terms creates and acknowledges an obligation of the Government. A method is prescribed by which each party can secure it.

Daly case (26 Op. Atty. Gen., 194).
United States *vs.* Jordan (96 U. S., 418).
United States *vs.* Wardwell (172 U. S., 48).
United States *vs.* Taylor (104 U. S., 126).
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United States *vs.* Shipley, C. C. A. (197 Fed. Rep., 265).
Broughton *vs.* United States (12 C. C., 330, 335).

It must, therefore, be concluded from the foregoing that the question of jurisdiction is a decided one by this court in favor of the defendant in error, and the doctrine of *stare decisis* should be invoked by this court. Hence, the first assignment of error (Record, p. 15) of the plaintiff in error in this case should not be sustained.

2d. Question of protest.

The authorities cited in the argument on point number 1 on the question of jurisdiction, also deal to a large extent with the question of protest, but we are compelled to discuss the subject independent of the first point in order to clarify the situation for the court.

The conclusion of the plaintiff in error that no recovery can be had in this case, as the taxes sought to be recovered under the refunding act of July 27, 1912, *supra*, were not paid under duress or protest, should have no place here, because as heretofore stated, this is not an action against the United States under the general system of internal-revenue laws (sections 3220, 3226, and 3228, R. S.), but is a suit founded upon a new and distinct act of Congress, which gives the defendant in error new rights to recover illegal taxes otherwise barred by the statute of limitations under the aforesaid sections 3220, 3226, and 3228, R. S.

The contention of the plaintiff in error was decided against it in the case of the Fidelity Trust Company *vs.* The United States, *supra*, in which the Court of Claims held (45th C. C.), page 367:

> "Reduced to its lowest terms, the act merely directs the Secretary of the Treasury to pay definite sums of money to certain persons therein prescribed. As we think was very properly said by the Attorney General in an opinion relating to the construction of this statute:
>
> "'The provisions of the statute are special and apply to a particular class of obligations against the Government. Being special, these claims are not

governed by the provisions of the prior general statute (R. S., 3228). Suits to recover money due under this act are not actions to recover taxes, but for money held by the Government in trust for the benefit of the parties to whom it rightfully belongs (26 Op. Atty. Genl., 195, 197).'

"We do not think it can be properly said that this suit arises under the revenue laws at all. It arises under a statute for the refunding of taxes illegally collected under the revenue laws, and the procedure and rules governing it are no different from what they would be if the money had reached the treasury in any other manner."

The case of Benjamin F. Jones, Jr., sole administrator of the estate of Adelaide P. Dalzell, calendar No. 450, October term, 1914, is identical with the above Fidelity case on the question of protest. In the Jones case (No. 450, October term of this court) the Government assumed that the question of protest as well as that of jurisdiction had been decided by this court in favor of the persons seeking the recovery of illegal taxes under the refunding act of June 27, 1902, and was a decided doctrine of law.

The doctrine is also supported by the following authorities:

Broughton case (12 C. C., 330, 335).
United States *vs.* Jordan (96 U. S., 418).
United States *vs.* Louisville (169 U. S., 249).
United States *vs.* Wardwell (172 U. S., 418).

We quote the language of the Attorney General in his opinion in the Daly case (26 Op. Atty. Genl., 194), which seems to state the law on the question of protest:

"* * * It will be observed under the provisions of this statute (meaning the act of June 27, 1902), that Congress has granted the right of repayment regardless of any conditions that may have heretofore operated as a bar to such repayment. The statute is an acknowledgment by Congress of a sup-

posed moral obligation; the provision is a bounty of the Government. *Whether or not the taxes were originally paid under protest is eliminated and the question of voluntary or involuntary payment is immaterial.*" (Italics ours.)

In the case of Thatcher *vs.* The United States (149 Federal Reporter, 903), it was held:

"The petitioners could not at any time have maintained suit to recover the tax as having been illegally collected. They paid it voluntarily, not under protest. The claim for refund, if they had any, is moral only, and not legal. It appealed to the Government's sense of fairness, and could be satisfied only by the bounty of the United States, given upon such terms as Congress saw fit to impose * * *."

In the case of the United States *vs.* Shipley (197 Federal Rep., 270, C. C. A.) Justice Gray, in delivering the opinion of the court, said:

"* * * It seems the refunding law of 1902 is not a part of this system (meaning sections 3220 and 3228, R. S.), but was enacted to meet the case of a designated class who had paid taxes not intended to be collected from them under a former law and to whom Congress thought it fair and just that such taxes should be refunded, and directed the Secretary of the Treasury to refund the same upon proper application made in accordance with such appropriate rules as he should prescribe. *These taxes were to be refunded regardless of protest,* which under the general system (meaning sections 3220 and 3228, R. S.) for revenue collection referred to by the Supreme Court in the case just cited, was necessary on every application to the customs officers for the refund." (All italics and parentheses ours.)

To be more explicit, it is proper to state that the Thatcher and Shipley cases just cited were suits brought against the United States under the Tucker Act for the recovery of taxes

voluntarily paid and illegally collected under the War Revenue Act of June 13, 1898, and actions were instituted for refunds by reason of section 3 of the refunding act of June 27, 1902.

The situation in these two cases is identical with that in the case at bar, which is for the recovery of certain taxes voluntarily paid, but illegally collected, under the War Revenue Act of June 13, 1898, the refundment of which is sought by reason of the refunding act of July 27, 1912.

This question of protest cannot be successfully maintained by the plaintiff in error as shown by the foregoing authorities; therefore the assignment of error number 4 (Record, p. 15) should not be sustained.

3d. Construction of the Refunding Act of July 27, 1912 (37 Stat., 240).

The main object of this legislation is manifestly clear upon the plain wording of the aforesaid act, its provisions being as follows:

> "That all claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected under the provisions of section twenty-nine of the Act of Congress approved June thirteenth, eighteen hundred and ninety-eight, known as the war-revenue tax, or of any sums alleged to have been excessive, or in any manner wrongfully collected under the provisions of said Act may be presented to the Commissioner of Internal Revenue on or before the first day of January, nineteen hundred and fourteen, and not thereafter.
>
> "SEC. 2. That the Secretary of the Treasury is hereby authorized and directed to pay, out of moneys of the United States not otherwise appropriated, to such claimants as have presented or shall hereafter so present their claims, and shall establish such erroneous or illegal assessment and collection, any sums paid by them or on their account or in their interest to the United Staes under the provisions of the Act aforesaid."

The clear intention of Congress in enacting the law was to give the claimants an opportunity to present claims for refund of internal revenue taxes on or before January 1, 1914, which had been erroneously or wrongfully assessed or illegally collected from them under the *provisions of the War Revenue Act of June* 13, 1898.

The aforesaid refunding act of July 27, 1912, is clearly general legislation.

Congress has passed a just act, and the case at bar comes directly within its terms if this court holds that the money so collected was a tax levied against export business.

Congress has passed a number of special acts refunding internal revenue taxes illegally collected under the War Revenue Act of June 13, 1898, some of which are as follows:

> Act of Congress approved June 27, 1902 (32 Stat., 406), provided for the refund of taxes collected under the War Revenue Act of June 13, 1898, *on export bills of lading; on legacies of a religious, charitable and educational character, and on contingent beneficial interests which did not vest in absolute possession or enjoyment prior to July* 1, 1902. (Italics ours.)
>
> The appropriation bill supplying deficiencies for the year ending June 30, 1907, provided for the refund of stamp taxes paid under the War Revenue Act of June 13, 1898, on *manifests.* (Italics ours.)
>
> The act of February 1, 1909 (35 Stat., 590), provided for the refund of stamp taxes paid on *foreign bills of exchange under* the War Revenue Act of June 13, 1898. (Italics ours.)
>
> The aforesaid act of February 1, 1909, was amended by the General Deficiency Act of August 5, 1909 (36 Stat., 120), extending the time for the filing of such claims until December 1, 1909.
>
> The General Deficiency Act of June 25, 1910, further extended the time for the filing of the claims for refund of stamp taxes paid on *foreign bills of exchange* under the War Revenue Act of June 13, 1898, to December 1, 1910. (Italics ours.)

The act of February 1, 1909, has been extended to December 1, 1911, and December 1, 1912, by amendments to subsequent general deficiency acts.

At the time House Bill No. 24699, 62d Congress, 2d Session (which afterwards became the refunding act of July 27, 1912), was under consideration by the Committee on the Judiciary in the House of Representatives, numerous bills had been introduced for the refund of various taxes illegally collected under the War Revenue Act of June 13, 1898, which were then pending before the House of Representatives, and the Honorable Secretary of the Treasury in nearly every instance recommended general remedial acts rather than to grant relief in specific cases, and his recommendation ultimately resulted in the passage of the refunding act of July 27, 1912, as a general remedial act for the refund of taxes illegally collected under the provisions of the War Revenue Act of June 13, 1898, this fact being shown by the report No. 848, 62d Cong., 2d Session, of the Committee on the Judiciary accompanying House Bill No. 24699, that part of which reads as follows:

"* * * This bill was prepared at the request of and has the approval of the Committee on Claims, before which private bills are pending, and it also has the approval of the Secretary of the Treasury.

"The sole object of this bill is to extend the time to January 1, 1914, for the filing of claims for refund of taxes erroneously assessed or illegally collected under the War Revenue Act of June 13, 1898. (See Knowlton *vs.* Moore, 178 U. S. Rep., p. 41 *et seq.*)

"Congress has passed acts for the refund of certain taxes, such as on foreign bills of lading, manifests, and foreign bills of exchange, as well as passing the act of June 27, 1902, which provided for the refund of certain taxes collected on charitable bequests and certain contingent beneficial interests, but no provision has as yet been made for the refund of taxes illegally collected where the rates were exces-

sive *or the tax was illegally exacted, under the decisions of the United States courts,* such claims being barred under section 3228 of the Revised Statutes, which requires a claim for refund to be made within two years from the date of the payment of the tax." * * *

"* * * Congress has repeatedly passed special acts under the same conditions, and there appears to be many bills providing for the refund of such taxes which have passed the Senate at this session, in which favorable reports have been made and which are now pending on the House calendar, and some of which are yet pending before the House Committee on Claims. *Furthermore, the Secretary of the Treasury has several times recommended that the general legislation be enacted giving these claimants additional time in which to present claims for the refund of taxes erroneously assessed or illegally collected under the act of June* 13, 1898, *commonly known as the Spanish War Revenue Tax Act."* * * * (Italics ours.)

The Refunding Act of July 27, 1912, *supra,* is plain in its terms as will be readily seen upon reading it, and should be construed with reference to the object intended to be effected by it. United States *vs.* Musgrave (160 Fed. Rep., 700).

If it is contended by the United States that the Refunding Act of July 27, 1912, is not plain or clear, and admits of statutory construction, then the decisions of this court are uniform and consistent, to clearly show that this claimant is entitled to the refund sought. It is a well-settled rule that so long as the language used is unambiguous, a departure from the natural meaning is not justified by any consideration of its consequence or public policy, and it is the plain duty of the court to give it force and effect.

Lake County *vs.* Rollins (130 U. S., 662).

United States *vs.* Goldenberg (168 U. S., 95).

Johnson *vs.* Southern Pacific Co. (196 U. S., 15).

"* * * it is fairly and justly permissible that the legislature which was unrestrained in its authority over the subject, has so shaped the law as without ambiguity or doubt, to bring within it everything that was meant should be embraced."

Cooley on Taxation, 2d edition, page 464.

"The statute must be held to mean what its language imports; when it is clear and imperative reasoning *ab inconvenienti* is of no avail, and there is no room for construction."

Boudinot *vs.* The United States (11 Wall., 616).

Lewis *vs.* United States, 92 U. S., 621.

In the case of the Board of Lake County Commissioners *vs.* Rollins (130 U. S. Rep., 671), the Court held, Mr. Justice Lamar delivering the opinion of the court:

"To get at the thought or meaning expressed in a statute, a contract or a constitution, the first resort, in all cases, is to the natural signification of the words, in the order of grammatical arrangement in which the framers of the instrument have placed them. If the words convey a definite meaning, which involves no absurdity nor any contradiction of other parts of the instrument, then that meaning, apparent on the face of the instrument, must be accepted, and neither the courts nor the legislature have the right to add to it or take from it." Newell *vs.* People (7 N. Y., 97); Hills *vs.* Chicago (60 Ills., 86); Denn *vs.* Reid (35 U. S., 10 Pet., 524); Leonard *vs.* Wiseman (21 Md., 204); People *vs.* Potter (47 N. Y., 375); Cooley, Const. Lim., p. 57; Story, Const., 400; Beardstown *vs.* Virginia (76 Ill., 34). "So, also, where the law is expressed in plain and unambiguous terms whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction." United States *vs.* Fisher (6 U. S., 2 Cranch, 358); Doggett *vs.* Florida R. Co. (99 U. S., 72).

Again on page 671:

> "Words are the common signs that mankind make use of to declare their intention to one another, and when the words of a man express his meaning plainly, distinctly, and perfectly, we have no occasion to have recourse to any other means of interpretation."

In the case at bar no fair ambiguity can be found in the language of the statute, and surely no fair uncertainty can exist concerning the intent of Congress in authorizing and directing the Secretary of the Treasury to refund the taxes sought here.

> "It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded every word. And that every part of a statute must be construed in connection with the whole, so as to make all parts harmonize if possible, and give meaning to it."
>
> Washington Market Co. *vs.* Hoffman (101 U. S., 112).

The result of an examination of the decisions of this court justifies a conclusion that this Refunding Act directs the refund of the tax in question in the case at bar, and any other construction placed upon this act, would, we say, be doing violence to the statute, and would be out of harmony with the decisions of this court.

> "It is not competent to reject or disregard a material part of an act of Congress unless it be so clearly repugnant to the residue of the act that the whole cannot stand together."
>
> Schulenberg *vs.* Harriman (21 Wall., 62).
>
> Central Transp. Co. *vs.* Pullman's Palace Car Co. (139 U. S., 35).
>
> McGourkey *vs.* Toledo & Ohio Central R. C. (146 U. S., 549).
>
> New York Indians *vs.* United States (170 U. S., 18).

"In construing a statute, every section, provision or clause should be expounded by reference to every other, and if possible every clause and provision be given and have the effect contemplated by the legislator. *One portion should not be construed to annul or destroy what has been clearly granted by another.*

"The most general and absolute terms of one section may be qualified and limited by conditions and exceptions contained in another, so that all may stand together."

Peck *vs.* Jenness (7 How., 612). (Italics ours.)

"Statutes must be so construed, if practicable, that one section will not defeat or destroy another, but explain and support it."

Bernier *vs.* Bernier (147 U. S., 242).
Hutchinson Investment Co. *vs.* Caldwell (152 U. S., 69).

"Where a special provision and a general provision in an act apparently conflict, the special must be taken to have been intended as an exception to the general provision."

Rodgers *vs.* United States (185 U. S., 83).

"Where the intention of Congress is plain the several provisions of the statute must be interpreted." ***(Ibid.)***

This court in affirming the Rodgers case, on page 89, quoted with approval the case of Crone *vs.* Reeder (22 Mich., 322) and numerous authorities cited there, in which it was held, as heretofore stated, that:

"Where there are two acts or provisions, one of which is special and particular and certainly includes the matter in question, and the other general, which if standing alone, would include the same matter, and thus conflict with the special act or provision, the special provision must be taken as intended to constitute an exception to the general act, as the legislature is not presumed to have intended a conflict."

THE STATUTE IS A REMEDIAL ONE AND SHOULD BE LIBERALLY INTERPRETED.

This contention is supported by Silver *vs.* Ladd (7 Wall., 219) and Johnson *vs.* Southern Pacific Co. (196 U. S., 15).

> "In expounding remedial laws, the courts will extend the remedy as far as the words will admit."
> Hayden's case (3 Coke, 7).
> Pierce *vs.* Hopper (1 Strang, 253).

> "A general revenue and remedial statute is to be liberally construed" (11 Appeals D. C., 453).

> "The act of August 2, 1886, known as the Oleomargarine Act is a revenue act to be construed liberally to carry out its purpose, and its penal provisions are to be rigidly construed" (Prather *vs.* United States, 9 D. C. Appeals, 82).
> "A remedial statute ought not to be so construed as to defeat in part the very purpose of its enactment."
> Beley *vs.* Naphtaly (169 U. S., 353).
> Jones *vs.* Guaranty, etc., Co. (101 U. S., 626).
> Twenty Per Cent cases, 13 Wall. (U. S.), 575.
> Ross *vs.* Roe, 1 Pet. (U. S.), 667.

As heretofore contended, we say again that the Refunding Act of July 27, 1912, must be construed with reference to the object intended to be effected by it, and in giving it such a construction there should be considered the occasion and necessity for its enactment, the defects and evils of the former law, and the remedy provided by the new one (U. S. *vs.* Ninety-nine Diamonds, 139 Fed. Rep., 961-5).

In conclusion, it is contended that the numerous decisions of the courts will show that in internal revenue cases a proper construction of this Refunding Act of July 27, 1912, justifies a recovery in favor of the defendant in error as shown by some of the following authorities:

"Internal revenue laws are to be construed liberally to carry out the purpose of their enactment."

United States *vs.* Hodson (10 Wall., 395).
Smith *vs.* Fiske (23 Wall., 374).
United States *vs.* Stowell (133 U. S., 12).
Rapley *vs.* Naphtaly (169 U. S., 361).

"We are therefore bound to give heed to the rule that, where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute."

Knowlton *vs.* Moore (178 U. S., 41).
Bate Refrigerating Co. *vs.* Sulzberger (157 U. S., 37).

On the points of jurisdiction, protest, and construction of the Refunding Act of July 27, 1912, the judgment of the District Court should be affirmed. Counsel for defendant in error will argue other questions involved.

SIMON LYON,
R. B. H. LYON,
Amicus Curiæ.